

Message Text

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ACTION EB-11

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R 190800 Z MAR 73

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 3862

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C O N F I D E N T I A L SECTION 1 OF 2 MANILA 3124

CINCPAC FOR POLAD

E. O. 11652: GDS

TAGS: MARR, RP

SUBJECT: 1971-72 MBA US- RP WORKING GROUP TALKS: REVIEW OF STATUS
OF NON- AGREED ARTICLES: ART. IV (SHIPPING AND NAVIGATION)

REF: MANILA 3122 DTG 190724 Z MAR 73

BEGIN SUMMARY: NEGOTIATION OF THIS ARTICLE TOOK UP DIS-
PROPORTIONATE AMOUNT OF TIME IN 1971-72 TALKS BECAUSE ISSUE
OF STATUS OF MAC CHARTERED AIRCRAFT AND MILITARY SEALIFT
COMMAND VESSELS UNDER THE ARTICLE HAS BEEN SOURCE OF CON-
TENTION FOR YEARS. AS ISSUE NOW STANDS, THERE ONLY ONE
POLICY QUESTION REMAINING, THAT OF BERTHING FEES AND
CHARGES FOR MSC- CHARTERED VESSELS OPERATING INTO PHILIP-
PINE PORTS. THIS ISSUE COMPLICATED, HOWEVER, BY DISPUTE
OVER MEANING OF " STATE AIRCRAFT" (USG)- VS-" PUBLIC AIR-
CRAFT" (GOP). EMBASSY BELIEVES AGREEMENT WITH GOP POSSIBLE
ON THIS ARTICLE AND RECOMMENDS REMAINING QUESTIONS BE
RE- STUDIED TO SEE IF FURTHER NEGOTIATING LATITUDE CAN
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BE ACCORDED US NEGOTIATORS, IF AND WHEN MBA NEGOTIATIONS RESUME.

1. PARAS TWO AND THREE (PARA FOUR WAS DELETED) OF THIS ARTICLE ARE AGREED. PARA ONE IS NON - AGREED. THE ISSUE TO BE SOLVED DOES NOT INVOLVE ACCESS TO PHILIPPINE PORTS AND AIRFIELDS OF MILITARY- OPERATED USG SHIPS AND VESSELS. THE ISSUE IS THAT OF THE STATUS OF MILITARY SEALIFT COMMAND- CHARTERED VESSELS AND MAC- CHARTERED AIRCRAFT.

2. OPERATION UNDER THE 1947 AGREEMENT HAS BEEN CHARACTERIZED BY FREQUENT DISAGREEMENT ABOUT THE STATUS OF MILITARY SEALIFT COMMAND CHARTERED VESSELS AND MILITARY AIRLIFT COMMAND CHARTERED AIRCRAFT, AND FROM TIME TO TIME THERE HAVE BEEN SERIOUS PROBLEMS OF IMPLEMENTATION, WITH CARGOES BEING HELD UP WHILE CONFLICTING LEGAL OPINIONS WERE DISPUTED. MAJOR DIFFICULTIES WERE OVERCOME IN 1968 WHEN NOTES WERE EXCHANGED GIVING PHILIPPINE CUSTOMS AUTHORITIES LIMITED INSPECTION RIGHTS, WHILE ESTABLISHING THAT U. S. OFFICIAL CARGO, HOWEVER CARRIED, IS NOT SUBJECT TO TAX.

3. IN VIEW OF THE TROUBLED HISTORY OF THIS SUBJECT, A MAJOR U. S. NEGOTIATING GOAL IN THE 1971-72 MBA WORKING GROUP TALKS WAS TO OBTAIN GOP AGREEMENT THAT MAC CHARTER AIRCRAFT AND VARIOUS TYPES OF CONTRACT VESSELS WOULD BE TREATED AS IF THEY WERE U. S. MILITARY AIRCRAFT AND VESSELS. AT ISSUE WAS THE RIGHT OF ACCESS FOR SUCH AIRCRAFT AND VESSELS TO U. S. BASES IN THE PHILIPPINES AND TO OTHER PHILIPPINE PORTS AND AIRPORTS SUCH AS MANILA INTERNATIONAL AIRPORT AND THE PORT OF MANILA. ALSO AT ISSUE WAS THE QUESTION OF WHETHER SUCH AIRCRAFT SHOULD BE REQUIRED TO PAY LANDING/ BERTHING FEES, AND SIMILAR CHARGES.

4. THE GOP HAD AS AN IMPORTANT NEGOTIATING GOAL THE ELIMINATION OF SPECIAL TREATMENT FOR COMMERCIAL VESSELS AND AIRCRAFT OPERATING INTO AND THROUGH U. S. BASES AND OTHER PORTS AND IARPORTS IN THE PHILIPPINES. GOP DESIRE APPEARED TO BE PRIMARILY MOTIVATED BY ECONOMIC AND SECONDARILY MOTIVATED BY CONCERNS ABOUT SOVEREIGN RIGHTS IN THE ABSTRACT SENSE. IN ECONOMIC TERMS, GOP SAW COM-
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MERCIAL AIRCRAFT AND VESSELS CARRYING USG CARGO AS

PROMISING SOURCE OF REVENUE FROM FEES, TAXES, AND OTHER CHARGES, AND WOULD THEREFORE PREFER TO LIMIT EXEMPTION TO MILITARY VESSELS AND AIRCRAFT ONLY. ON THE QUESTION OF CLEARANCE, THEY DESIRED THAT COMMERCIAL VESSELS AND AIRCRAFT UNDER CHARTER TO THE USG BE REQUIRED TO OBTAIN CLEARANCE FROM GOP ON SAME BASIS AS OTHER COMMERCIAL CARRIERS.

5. NEGOTIATION OF THIS ARTICLE CONSUMED A DISPROPORTIONATE AMOUNT OF TIME DURING WORKING GROUP TALKS. U. S. PANEL TOOK A STRONG AND HIGHLY INFLEXIBLE POSITION REGARDING BOTH VESSELS AND AIRCRAFT INTEGRATED INTO U. S. MILITARY TRANSPORTATION SYSTEM AND MADE IT CLEAR TO GOP PANEL THAT THE VALUE OF CLARK AIR BASE AND SUBIC NAVAL BASE TO THE USG DEPENDED IN LARGE PART ON THEIR UTILITY AS TRANSPORTATION TERMINALS FOR THE TRANSSHIPMENT OF MILITARY PASSENGERS AND CARGO BY THE VESSELS AND AIRCRAFT OF THE MILITARY TRANSPORTATION SYSTEM, INCLUDING BOTH GOVERNMENT OWNED AND CHARTERED VESSELS AND AIRCRAFT.

6. DURING THE NEGOTIATIONS, US PANEL WAS ALLOWED TO CONCEDE THE PHILIPPINE DEMAND THAT PUBLIC VESSELS OBTAIN GOP CLEARANCE (I. E., PERMISSION) TO VISIT PHILIPPINE PORTS, RATHER THAN MERE NOTIFICATION, WHICH HAD BEEN THE RULE UNDER THE 1947 AGREEMENT. THIS WAS APPARENTLY SUFFICIENT TO MEET THE GOP NEGOTIATING GOALS CONCERNING THEIR SOVEREIGN RIGHTS TO CONTROL THE PASSAGE OF FOREIGN VESSELS. RE THE PRIMARY PHILIPPINE NEGOTIATING GOAL, I. E., THE ECONOMIC GOAL, VIRTUALLY THE ONLY CONCESSION US PANEL COULD MAKE DURING THESE TALKS WAS NOT REALLY A CONCESSION, BUT MERELY A CLARIFICATION OF OUR POSITION TO MAKE IT CLEAR WE WERE ATTEMPTING TO INCLUDE ONLY THOSE CHARTERED AIRCRAFT FULLY INTEGRATED INTO THE MILITARY AIRLIFT COMMAND WORLDWIDE TRANSPORTATION SYSTEM, AND NOT AD HOC SPECIAL SERVICES HOLIDAY CHARTERS. THESE LATTER, WE SAID, WOULD CONTINUE TO REQUIRE PHILIPPINE CAB APPROVAL AND FULL COMPLIANCE WITH PHILIPPINE GOVERNMENT REQUIREMENTS, AS THEY ALWAYS HAVE IN THE PAST.

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7. DURING FINAL STAGES OF NEGOTIATION, DEPT OF FINANCE REPRESENTATIVE TOLEDO INDICATED THAT PHIL PANEL HAD SIGNIFICANTLY GREATER DIFFICULTY WITH USG PROPOSAL AS IT APPLIED TO PHILIPPINE PORTS AND AIRPORTS. HE THEREFOR PROPOSED USG AGREE THAT CHARTER VESSELS AND AIRCRAFT CALLING AT PHILIPPINE PORTS AND AIRPORTS SHOULD BE SUBJECT TO LANDING/ BERTHING CHARGES, BUT THAT SUCH VESSELS AND AIRCRAFT OPERATING AT U. S. MILITARY BASES WOULD NOT BE SUBJECT TO SUCH CHARGES. QUANTITATIVE REVIEW OF USE OF PHILIPPINE PORTS AND AIRPORTS BY MAC AND MSC CHARTERED AIRCRAFT AND VESSELS INDICATED VERY LOW VOLUME OF USE. PHILIPPINE PROPOSAL THEREFORE APPEARED TO BE NEAR TOTAL ABANDONMENT BY GOP OF ITS NEGOTIATING GOALS ON THIS ISSUE. U. S. PANEL SAW SUBSTANTIAL BENEFIT IN ACCEPTING FORTHCOMING PHILIPPINE PROPOSAL, INCLUDING ITS VERY MODEST COST, RATHER THAN CONTINUING EFFORT TO INSIST ON TOTAL EXEMPTION FOR CHARTER VESSELS AND AIRCRAFT, EVEN WHEN OPERATING AT PHILIPPINE PORTS AND AIRPORTS. ACCORDINGLY, WE RECOMMEND

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MENDED WASHINGTON APPROVAL OF PHILIPPINE PROPOSAL.

8. WASHINGTON RESPONSE WAS SYMPATHETIC, IN THAT IT ALLOWED US PANEL TO AGREE TO PAYMENT OF FEES BY MAC CHARTER AIRCRAFT OPERATING AT PHIL AIRPORTS. HOWEVER, OUR INSTRUCTIONS CONCERNING CHARTERED VESSELS WERE LESS FORTHCOMING. THE PROPOSAL THAT THE U. S. PANEL WAS INSTRUCTED TO TABLE DID NOT SPECIFICALLY DISPOSE OF THE QUESTION OF FEES FOR CHARTERED VESSELS, BUT LEFT THE INFERENCE US

WOULD NOT PAY THEM BY SEEKING TO EMPHASIZE THE US VIEW THAT THEY SHOULD BE REGARDED AS " PUBLIC VESSELS". THE WASHINGTON PROPOSAL ALSO REQUIRED THAT THE AGREEMENT RELATING TO CHARTER AIRCRAFT USE THE TERM " STATE AIRCRAFT" (BECAUSE THIS TERM HAS A WELL UNDERSTOOD MEANING IN INTERNATIONAL LAW) RATHER THAN THE GOP PROPOSED TERM " PUBLIC AIRCRAFT."

9. AS ARTICLE IV STANDS NOW, THEREFORE, THERE IS ONLY ONE POLICY QUESTION REMAINING, I. E., THE QUESTION OF BERTHING FEES AND CHARGES FOR MILITARY SEALIFT COMMAND VESSELS OPERATING INTO PHILIPPINE PORTS. HOWEVER, FINAL NEGOTIATION OF THIS RATHER SIMPLE ISSUE CONTINUES TO BE HAMPERED BY HIGHLY DOCTRINAIRE DISPUTE BETWEEN MANILA AND WASHINGTON BUREAUCRACIES CONCERNING THE MEANING OF " STATE AIRCRAFT" AND " PUBLIC VESSELS". EMBASSY BELIEVES AGREEMENT POSSIBLE WITH GOP ON THIS ARTICLE: (1) IF US WILL AGREE TO PAY BERTHING CHARGES IN PHILIPPINE CIVILIAN PORTS; (2) IF US WILL NOT INSIST ON RESTATING A DEFINITION OF " STATE AIRCRAFT"; AND (3) IF GOP WILL GIVE ASSURANCES THAT THE 1968 EXCHANGE OF NOTES WILL BE CONTINUED IN EFFECT.

10. RECOMEND STATE AND DEFENSE RE- STUDY ART. IV TO DETERMINE IF NEGOTIATING LATITUDE OUTLINED IN PARA 9 THIS MESSAGE CAN BE ACCORDED US NEGOTIATORS, IF AND WHEN MBA NEGOTIATION RESUMED.
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